RECORD OF DECISION

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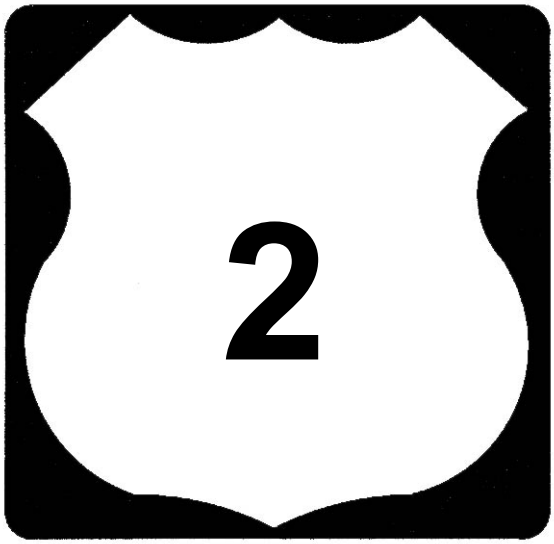
US Highway 2
US Highway 85 to West of US Highway 52
Williams, Mountrail, and Ward Counties, North Dakota

Project No.	**PCN**
NH-7-002(051)032	12585



Prepared by

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
BISMARCK, NORTH DAKOTA

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February 2004

23 USC § 409
NDDOT Reserves All Objections

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DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

RECORD OF DECISION

UNITED STATES HIGHWAY 2
US HIGHWAY 85 TO WEST OF US HIGHWAY 52
WILLIAMS, MOUNTRAIL, AND WARD COUNTIES, NORTH DAKOTA

PROJECT NH-7-002(051)032

The proposed project is to improve United States Highway 2 (US 2) from the junction of US 85, located north of Williston, to the junction of US 52, located northwest of Minot. The proposed project is approximately 100 miles long and crosses portions of Williams, Mountrail, and Ward counties in northwestern North Dakota. This segment of US 2 is currently a two-lane roadway with a posted speed limit of 65 miles per hour. The proposed project will provide a divided four-lane highway along the entire 100-mile segment. The Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement (FEIS) are incorporated by reference herein and made part of the Record of Decision (ROD).

The purpose of the proposed US 2 reconstruction project is to improve safety, enhance system performance, and improve system continuity. The proposed project is needed to address safety problems resulting from roadway deficiencies, frequent turning movements, a higher percentage of truck traffic, and an aging driver population. Safety concerns stem from the conflict between traffic traveling at high speeds and traffic traveling at much slower speeds, such as military convoys and large, slow-moving agricultural machinery. The proposed project is needed to support the increasing transportation needs resulting from changes in the economy and ongoing economic development initiatives. Population loss in smaller towns has forced many residents to travel longer distances to obtain basic services and employment opportunities. The project area is also experiencing consolidation of grain elevators, diversification of crops, and increased use of irrigation, which are all factors associated with increased use of trucks to transport agricultural products to market. Additionally, improvements to US 2 are necessary to allow the roadway to function properly as part of the Interregional System of roads under NDDOT's Highway Performance Classification System. These improvements are consistent with the Statewide Transportation Plan, and the project is listed in the approved Statewide Transportation Improvement Program (STIP).

I. Alternatives Considered

A. No Build (3R)

The No-Action Alternative would maintain US 2 as a two-lane highway as it exists today. The improvements would be limited to resurfacing type of activities consisting of bituminous overlays and pavement repairs that extend the service life of the highway by providing additional structural capacity.

Portions of US 2 within the study segment were reconstructed or received a bituminous overlay during the mid to late 1990s. An exception is the segment of US 2 extending from US 85 to Ray (milepost 32.4 to 53.3). It is anticipated that this segment would require a bituminous overlay or a mill and bituminous overlay. The existing roadway width in this segment is generally 40 feet and is sufficient for a bituminous overlay. Safety improvements such as slope flattening were previously completed over the full length of the project.

B. Build Alternatives

1. North Alternative

The North Alignment Alternative consists of providing a divided four-lane highway by constructing a new roadway (two-lane with 70-mph design speed) north of and parallel to the existing roadway. The north roadway centerline is offset 104 feet from the centerline of the existing roadway. Paved shoulders, with a width of four feet on the inside next to the median and ten feet on the outside of each roadway (new and existing), are proposed. Shoulder in-slopes are designed at a 6:1 (horizontal: vertical) grade.

The existing sections through the cities of Ray and Stanley will be used. The typical section through the White Earth River Valley (approximate MP 71 to MP 76) was modified from a 104-foot centerline-to-centerline to a 54-foot centerline-to-centerline distance to avoid and to minimize impacts to wetlands and cultural resources.

The new roadway alignment through Berthold would be essentially the same as the South Alignment Alternative. A rural typical section through Berthold is proposed with the new roadway located on the north side of the existing roadway based on using an 84-foot centerline-to-centerline rural section as exists in Stanley.

The new roadway transitions back to the south side of the existing roadway near the horizontal curve at the eastern limits of Berthold (approximate milepost 123.81). This avoids a salvage yard business located on the north side of the existing roadway (Figure B-5 and B-7 in the FEIS appendices).

Although the impact analysis is based on the alignment and typical section described, an alignment shift or partial reconstruction may also be considered from mileposts 86.59 to 88.13 and 93.3 to 94.14 to avoid railroad impacts. The alignment shift or partial reconstruction would be used to maintain the necessary horizontal separation between US 2 and the railroad tracks, therefore, eliminating the need for track relocation.

2. South Alternative

The South Alignment Alternative consists of providing a divided four-lane highway by constructing a new roadway (two-lane with a 70-mph design speed) south of and parallel to the existing roadway. The south roadway centerline is offset 104 feet from the centerline of the existing roadway. Paved shoulders, with a width of four feet on the inside next to the median and ten feet on the outside of each roadway (new and existing), are proposed. Shoulder in-slopes are designed at a 6:1 (horizontal: vertical) grade.

The existing sections through the cities of Ray and Stanley will be used. The typical section through the White Earth River Valley (approximate MP 71 to MP 76) was modified from a 104-foot centerline-to-centerline to a 54-foot centerline-to-centerline distance to avoid and to minimize impacts to wetlands and cultural resources.

The new roadway alignment through Berthold would be essentially the same as the South Alignment Alternative. A rural typical section through Berthold is proposed with the new roadway located on the north side of the existing roadway based on using an 84-foot centerline-to-centerline rural section as exists in Stanley.

The new roadway alignment through Berthold would be essentially the same as the South Alignment Alternative. A rural typical section through Berthold is proposed with the new roadway located on the north side of the existing roadway based on using an 84-foot centerline-to-centerline rural section as exists in Stanley.

The new roadway transitions back to the south side of the existing roadway near the horizontal curve at the eastern limits of Berthold (approximate milepost 123.81). This avoids a salvage yard business located on the north side of the existing roadway (Figure B-5 and B-7 in the FEIS appendices).

3. Selective North-South Alternative (Selected)

The Selective North-South Alignment Alternative (selected) consists of providing a divided four-lane highway by selectively constructing a new roadway (two-lane with 70-mph design speed) north or south of and parallel to the existing roadway (Figure 2-6 in the FEIS). Reverse curves will be used to transition the new roadway from one side to the other side of the existing roadway. This alternative was developed because it offers the maximum possible flexibility to avoid and minimize direct impacts to or encroachment upon farmsteads, occupied residences, industrial structures, missile silos, cultural resources, wetlands, and easement wetlands. This alternative is a combination of the North Alignment and South Alignment Alternatives. Locations where the new roadway would be added north or south of the existing roadway are listed in Table R-2.

The new roadway is offset 84 to 104 feet from the centerline of the existing roadway. Paved shoulders, with a width of four feet on the inside next to the median and ten feet on the outside of each roadway (new and existing), are proposed. Shoulder in-slopes are designed at a 6:1 (horizontal: vertical) grade.

The existing sections through the cities of Ray and Stanley will be used. The Selected alternative was modified to extend this five-lane section to the west approximately three-eights of a mile to reduce the wetland impacts adjacent to McLeod Lake. The typical section through the White Earth River Valley (approximate MP 71 to MP 76) was modified from a 104-foot centerline-to-centerline to a 54-foot centerline-to-centerline distance to avoid and to minimize impacts to wetlands and cultural resources. The new roadway alignment through Berthold would be essentially the same as the South Alignment and North Alignment Alternatives.

In order to avoid easement wetlands, minor modifications have been made to the selected alternative, which offers maximum flexibility to shift the roadway in order to avoid

important resources. The alignment of this alternative was adjusted from six miles west of Berthold to the east side of Berthold. The new roadway transition, from the south side to the north side of the existing roadway, was changed from approximate MP 114.5 to

Table R-2
New Roadway Location for the Selective North-South Alignment Alternative (Selected)

US 2 Section	New Roadway Location	Approximate Milepost
Section 1	South	31.93 to 52.88
Section 2	Existing	52.88 to 54.2 (existing section through Ray)
Section 3	South	54.2 to 81.92 (west side of Ross)
Section 4	South	81.92 to 83.59 (east side of Ross)
Section 5	South	83.59 to 84.2
Section 6	North	84.2 to 85.6
Section 7	South	85.6 to 89.26
Section 8	Existing	89.26 to 91.29 (existing section through Stanley)
Section 9	South	91.29 to 114.8
Section 10	North	114.8 to 116.15
Section 11	North	116.15 to 120.5 (west side of Berthold)
Section 12	North	120.5 to 124.14 (east side of Berthold)
Section 13	South	124.14 to 128.95
Section 14	South	128.95 to 130.18
Section 15	South	130.18 to 131.24

approximate MP 114.9 to avoid easement wetlands. The new roadway will not transition back to the south side until it reaches the east side of Berthold (approximate milepost 124.14). This modification will avoid impacts to easement wetlands, minimize impacts to non-easement wetlands, and avoid relocation impact to the farmhouse located north of US 2 at MP 117.

The Selective North-South Alignment Alternative (selected) offers the maximum possible flexibility to locate the new roadway to the south from MP 128.95 to MP 130.18. This modification from the DEIS will keep the new roadway on the south side of the existing roadway to avoid impacts to easement wetlands, reduce construction costs, and provide a safer roadway by eliminating two sets of double-reverse curves. This modification will require one additional farmstead relocation.

4. Complete Reconstruction

The Complete Reconstruction Alternative consists of providing a divided four-lane highway by obliterating the existing roadway and constructing new north and south roadways (two-lane with 70-mph design speed) in the center of the existing ROW. The alignment of the new roadways would parallel the alignment of the existing roadway. The centerlines of the new roadways would be offset a distance of 104 feet. Shoulder widths would be four feet on the inside and ten feet on the outside of the new roadways. The driving lanes and shoulders would be paved. Shoulder in-slopes would have a 6:1 (horizontal: vertical) grade.

The existing sections through the cities of Ray and Stanley will be used. The typical section through the White Earth River Valley (approximate MP 71 to MP 76) was modified from a 104-foot centerline-to-centerline to a 54-foot centerline-to-centerline distance to avoid and to minimize impacts to wetlands and cultural resources.

The new roadway alignment through Berthold would be essentially the same as the South Alignment, North Alignment, and Selective North-South Alignment Alternatives (Selected). The divided four-lane highway section will be centered within the existing ROW until the beginning of the existing curve (approximate milepost 122.3) on the west side of Berthold. The new roadway will then be added to the north of the existing roadway, as with the other build alternatives. One house, located north of the existing roadway will be less than 41 feet from the outside shoulder of the new roadway. The impact analysis assumes this house will be relocated.

The new roadway transitions to the south side of the existing roadway near the horizontal curve at the eastern limits of Berthold (approximate milepost 123.81). This avoids a salvage yard business located on the north side of the existing roadway (Figure B-3 and B-7 in the FEIS appendices). The new roadways then transition back to the center of the existing ROW east of the salvage yard (approximate milepost 124.61).

II. Project Decision

Selected Alternative:

The Selective North-South Alignment Alternative (preferred) was selected. As stated in the FEIS, this alternative was developed as a combination of the North and South Alignment Alternatives because it offers the maximum possible flexibility to avoid and to minimize direct impacts to or encroachment upon farmsteads, occupied residences, industrial structures, missile silos, cultural resources, wetlands, and easement wetlands. The Selected Alternative will use the existing roadway primarily as the westbound roadway (approximately 91 miles) with a small portion of it used for the eastbound roadway (approximately 9 miles).

Not one of the alternatives has the least total impacts in all categories of impacts (see Table R-1). The North Alignment Alternative has the least estimated total wetland impacts at 75.15 acres, which compares to 79.84 acres of wetland impacts for the Selected Alternative. The difference (less than 6 percent) is minimal and the North Alternative wetland impacts are essentially equal to the Selected Alternative. On the other hand, the North Alternative requires the most easement wetland replacements at 11.12 acres and has the second most jurisdictional wetland impacts at 7.22 acres. The Selected Alternative has no easement wetland impacts and the least jurisdictional wetland impacts at 6.97 acres.

The North Alternative has the most prime farmland impacts at 55 acres as compared to 28 acres for the Selected Alternative. The North Alternative will also have the most relocation impacts (ten, including one business relocation) whereas the Selected Alternative will require the least (three, none of which will be a business). In addition to the impacts listed on Table R-1, the North Alignment will impact a cemetery, requiring relocation of burials, and will require relocation of 29 miles of Stanley's main water supply line. The Selected Alternative will not impact the cemetery and will only impact 1.4 miles of the waterline. Impacts to cultural resources are similar with one exception; the North Alternative will impact a standing structure eligible for the National Register of Historic Places (NRHP). All other impacts are similar between these two alternatives. Because impacts for the North Alternative are greater than the Selected Alternative in all areas with the exception of the total wetlands, the Selective North-South Alignment Alternative (selected) is considered the environmentally preferred alternative of these two alternatives.

The Complete Reconstruction Alternative has the most estimated total wetland impacts at 87.92 acres, which is slightly more than the Selected Alternative at 79.84 acres. The Complete Reconstruction will require 1.47 acres of easement wetland replacements and has the most jurisdictional wetland impacts at 8.53 acres whereas the Selected Alternative has no easement wetland impacts and the least jurisdictional wetland impacts at 6.97 acres.

The Complete Reconstruction Alternative impacts 19 acres of prime farmland as compared to 28 acres for the Selected Alternative. Complete Reconstruction will require seven relocations whereas the Selected Alternative will require only three. In addition to the impacts listed on Table 4-8 in the FEIS, the Complete Reconstruction Alternative will have greater impact to the traveling public during construction.

All build alternatives, except the Complete Reconstruction Alternative, will leave the existing roadway in place, and traffic will be maintained on it while the new roadway is under construction. Because Complete Reconstruction requires building twice as much roadway, requires twice as much asphalt surfacing, and will require major traffic control, it is estimated to cost more than twice as much as the Selected Alternative ($279.3 million vs. $109.9 million). All other impacts are similar between these two alternatives. Because impacts for the Complete Reconstruction Alternative are all greater than or similar to the Selected Alternative, with the one exception of prime farmland, and because Complete Reconstruction is estimated to cost more than twice as much, the Selective North-South Alignment Alternative (selected) is considered the environmentally preferred alternative of these two.

The South Alignment Alternative will impact 79.50 acres of wetlands, which is equivalent to the Selected Alternative at 79.84 acres. The South Alignment will require 0.92 acre of easement wetland replacements and will impact 6.97 acres of jurisdictional wetlands whereas the Selected Alternative has no easement wetland impacts and the same jurisdictional wetland impacts at 6.97 acres.

The South Alignment Alternative impacts 27 acres of prime farmland similar to the Selected Alternative, which has 28 acres. The South Alignment will require four relocations whereas the Selected Alternative will require only three. The additional relocation included in the South Alignment is an active farm located on the south side of the road west of Stanley. At this location, the Selected Alternative included the new roadway to the north of the existing. Currently, NDDOT

Table R-1. Summary of Impact by Alternative

		North Alternative	South Alternative	Selective North/South Alternative (Selected)	Complete Alternative	No Action
Wetlands						
	Easement	3.11	.81	0	.4	0
	Jurisdictional	7.22	6.97	6.97	8.53	0
	Others[1]	64.82	71.72	72.87	78.99	0
	Total	75.15	79.50	79.84	87.92	0
	Easements[2] Within ROW	11.12	.92	0	1.47	0
Relocations						
	Businesses	1	0	0	0	0
	Homes	9	4	3	7	0
Prime Farmland (Acres)		55	27	28	19	0
Cemeteries		1	0	0	0	0
Cultural Resources						
	Historic[3] Structure	1	0	0	0	0
	Archeological	3	3	3	3	0
	Total	4	3	3	3	0

[1]See Tables D-11 and D-12 in appendices of the FEIS for wetland classifications using the Cowardin system.
[2] Wetlands covered by USFWS easements (treated as 4[f] properties) in the new right of way that will have to be replaced at some other location.
[3] NRHP eligible therefore it would be considered a 4[f] property.

owns excess right of way to the south that can be sold to the adjacent landowner. There are several acres in the right of way that can be returned to prime farmland thereby rendering the impacts slightly less for the Selected Alternative.

All other impacts are similar between these two alternatives. Because the South Alignment will impact 4(f) property and require an additional relocation, the Selective North-South Alignment Alternative (selected) is considered the environmentally preferred alternative of these two.

The Selected Alternative is the only alternative that complies with the Section 4(f) requirements to avoid the use of 4(f) properties for federally funded transportation program. Furthermore, the Selected Alternative has the least jurisdictional wetland impacts, has the least relocation impacts, is estimated to be the lowest cost, and all other impacts are similar to or less than the other build alternatives. Modifications to the other build alternatives would need to be extensive in order to match the comprehensive direct impact avoidance and minimization realized with the selected alternative. These extensive modifications to the other build alternatives would, in essence, convert them to the Selective North-South Alignment Alternative (selected). The Selective North-South Alignment Alternative (selected) is considered the environmentally preferred alternative because it provides the greatest overall avoidance and minimization of resource impacts as well as social impacts of all the build alternatives that met the Purpose and Need. All practicable means to avoid or minimize environmental harm from the Selective Alternative have been adopted.

III. Section 4(f)

Section 4(f) of the Department of Transportation (DOT) Act of 1966 prohibits the use of land from significant publicly owned parks, recreational areas, wildlife or waterfowl refuges, or significant historic sites for any federally funded transportation program, unless a determination is made that: There is no feasible and prudent alternative to using such land; and the project includes all possible planning to minimize harm to the land resulting from its use. The Section 4(f) document for US 2 was distributed with the Final EIS to agencies and organizations on the official distribution list. Additional copies were sent to agencies, organizations and the public that had either requested a copy of the document, and/or that could be affected by the proposed project.

There are numerous United States Fish and Wildlife Service (USFWS) easement wetlands within the project area. Easement wetlands are wetlands located on privately owned parcels where the USFWS

has purchased a conservation easement and therefore has an interest. These easements, which prohibit draining, filling, or burning of a wetland within the parcel, are treated as 4(f) properties.

Three of the build alternatives would impact 4(f) properties:

- North Alternative will impact 11.12 acres of easement wetlands and one historic structure.
- South Alternative will impact .92 acres of easement wetlands.
- Complete Reconstruction will impact 1.47 acres of easement wetlands.

The Selective North-South Alternative (selected) is the only build alternative that avoids impacts to all Section 4(f) resources.

IV. Measures to Minimize Harm

The following is a list of commitments by FHWA and the NDDOT to minimize the environmental impacts caused by this project.

a. Wetland mitigation will consist of replacement, including functions, of filled or drained wetlands. The NDDOT minimized the wetland impacts to the greatest extent possible. During final design, priority will be given to replacement by constructing or expanding wetlands within or adjacent to the ROW and constructing wetlands in borrow areas. Mitigation design details will be developed in conjunction with the development of roadway design of each segment. NDDOT and FHWA will review wetland impacts and mitigation details, throughout the design and permit review processes, with North Dakota Game and Fish Department (NDGFD), United States Fish and Wildlife Service (USFWS), and Army Corps of Engineers (ACOE). If an acceptable onsite plan cannot be developed, or only part of the acreage can be mitigated onsite, the project wetland impacts or remaining impacts will be mitigated offsite.

   When wetland impacts are greater than what can be mitigated on or near the project, creating or restoring wetlands at offsite locations will be used to mitigate the impacts. NDDOT is working on establishing wetland banks in all biotic regions of the state If offsite mitigation is required before a bank can be established in this region, credits will initially be deducted from the Hillesland mitigation bank in Nelson County, ND (T150N, R 56W, Sec 19). As allowed in the Mitigation Bank Instrument, these credits will be transferred for deduction from a new bank closer to the project area once it is established.

The contractor will be required to comply with NDDOT Standard Specification, Special Provisions, and plan details for sediment and erosion control. The contractor will be prohibited from disposing waste materials associated with the project in wetland areas. Replacing topsoil and seeding the disturbed areas to facilitate the establishment of vegetation, when each project segment is completed, will restore temporary construction zone impacts

b. In conjunction with the field survey, extensive consultation with several Indian tribes was conducted to locate potential cultural resource sites. However, it is possible that construction activity may results in the discovery of cultural resources. If that happens, the NDDOT Cultural Resource Section will be notified and efforts will be made to protect the material until cultural resource concerns have been appropriately addressed. NDDOT's Standard Specifications for Road and Bridge Construction require the contractor to discontinue work in the area and notify NDDOT of the discovery. Consultation with the State Historic Preservation Office (SHPO) and Native American tribes will take place, and decisions regarding appropriate treatment will be made. Activities undertaken to address discoveries will comply with the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the Archeological Resources Protection Act, as appropriate to the situation.

c. As part of a Memorandum of Agreement with the ND State Historical Society the FHWA will insure that the following measures are carried out (see pages 4[f]-11 & 12, in FEIS Appendices):
    I. Avoidance techniques for all other eligible and unevaluated (avoided) sites as discussed in the NDDOT letter to SHPO dated May 19, 2003 (see page 4[f]-13 in FEIS Appendices) will be followed or 1. NDDOT will discuss modified avoidance plans with SHPO and receive their concurrence that modified techniques will also avoid effects to the Historic Property or unevaluated resource, or 2. The Section 106 process will be reopened and the effects determination reassessed.
    II. Data recovery plans and any other mitigation issues will be worked out through consultation between NDDOT and ND SHPO, considering input from interested Native American tribes, with fieldwork timed to begin two summers prior to bid opening for the project through the White Earth Valley.

d. The contractor will be required to conduct his activities in such a manner as to comply with the Air Pollution Control Regulation of the state of North Dakota.

e. The contractor will be required to conduct his activities in such a manner as to comply with the Standards of Surface Water Quality for the State of North Dakota, as issued by the North Dakota Department of Health. The contractor will be required to obtain a Storm Water Discharge Permit and submit a Storm Water Pollution Prevention Plan with the Department of Health.

f. The contractor will be responsible for the proper disposal of waste materials. The contractor will be required to comply with the Standards of Soils, Surface Waters, and Fill Material for the State of North Dakota as issued by the North Dakota Department of Health.

g. The contractor will be required to comply with the NDDOT Standard Specification, Special Provisions, and plan details to adequately control erosion and sedimentation. Disturbed areas will be re-seeded with a native grass mixture.

h. The contractor will be required to maintain and protect traffic in the construction area while this project is under construction. The contractor will take all reasonable precautions to protect children, pedestrians, and bicyclists in the construction area.

i. The contractor will be required to comply with local and state noise ordinances.

j. All utility companies located in the project are will be notified as to which of their facilities are in conflict with the construction. Conflicts will be addressed in accordance with the NDDOT Utility Accommodation Policy.

k. A U.S. Army Corps of Engineers 404 permit will be obtained and all requirements of this permit will be made a part of the project plans.

l. A flood plain permit will be obtained from the North Dakota State Water Commission (NDSWC). The NDDOT minimized the impacts to all flood plains to the greatest possible extent. All requirements of this permit will be made a part of the project plans.

m. NDDOT will obtain a Section 401 Water Quality Certification from the North Dakota Department of Health, Water Quality Division as part of the Section 404 permit for this project.

n. A FAA Form 7460-1, "Notice of proposed construction or alteration" form will be completed and submitted to the Federal Aviation Administration.

o. Unavoidable loses of trees and shrubs will be replaced on a 2:1 basis.

p. NDDOT has developed a piping plover monitoring plan with the USFWS. Conditions of the plan will be included in the construction contract documents.

V. Monitoring or Enforcement Program

The Design Division of the North Dakota Department of Transportation are responsible to insure the above commitments are incorporated into plans and right of way acquisition activities. The Construction Division is responsible for insuring fulfillment of commitments during construction.

The FHWA Division Office will review the right of way acquisition, plans, specifications, and estimates to insure all measures to minimize harm have been included. The FHWA Division Office will monitor construction to insure that measures to minimize harm have been implemented. Construction plans will be sent to the US Army Corps of Engineers, the US Fish and Wildlife Service, and the North Dakota Game and Fish Department to ensure that all necessary requirements are met.

VI. Comments on Final EIS

Comments on the FEIS were received from US Department of Health & Human Services, US Environmental Protection Agency-Region 8, and the North Dakota Department of Health. Comments and responses to comments are included below. No other written or verbal comments were received.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

January 27, 2004

Mr. Mark Gaydos, PE
Design Engineer
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismark, North Dakota 58505-0700

RECEIVED NDDOT
FEB 2 2004
DESIGN DIVISION
BISMARCK, ND

Re: Project No. NH-7-002(051)032

Dear Mr. Gaydos:

1.

Thank you for sending us a copy of the Final Draft Environmental Impact Statement (FEIS) for US Highway 2 from US Highway 85 to West of Highway 52 Williams, Mountrail, and Ward Counties, North Dakota. We are responding on behalf of the Department of Health and Human Services (DHHS), U.S. Public Health Service.

We have reviewed this document for potential health and safety impacts on human populations and we believe that these impacts were adequately addressed. We believe the project will result in positive safety benefits and improved transportation patterns within the area.

Sincerely yours,

Paul Joe

Paul Joe, DO, MPH
Medical Officer
National Center for Environmental Health (F16)
Centers for Disease Control & Prevention

US Department of Health & Human Services (January 27, 2004)
Response:

1. Comment noted.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
http://www.epa.gov/region08

☐ Div ☐ Proj ☐ City ☐ Hwy
PROJECT TIED TO
ORIGIN DATE
ITEM #

JAN 29 2004

Ref: 8EPR-N

Mr. Allen R. Radliff, P.E.
Division Administrator
Federal Highway Administration
1471 Interstate Loop
Bismarck, ND 58501

Jason Renschler
North Dakota Project Manager
U.S. Army Corps of Engineers [Omaha District]
North Dakota Regulatory Office
1513 South 12th Street
Bismarck, North Dakota 58504

RECEIVED NDDOT
FEB 2 2004
DESIGN DIVISION
BISMARCK, ND

Re: FEIS and Corps Public Notice Number 200360637; U.S. Highway 2; Williams, Mountrail and Ward Counties, ND; CEQ # 030576

Dear Messrs. Radliff and Renschler:

This letter provides the U.S. Environmental Protection Agency's (EPA) joint comments regarding: (1) the Final Environmental Impact Statement (FEIS) for the proposed widening of North Dakota's U.S. Highway 2, from north of Williston (milepost 32.4) to west of Minot (milepost 131.3); and (2) the U.S. Army Corps of Engineers' (Corps) January 12, 2004, Public Notice for that project. Our comments are in accordance with EPA responsibilities under the National Environmental Policy Act (NEPA), the Clean Water Act (CWA), and Section 309 of the Clean Air Act.

We thank the Federal Highway Administration (FHWA), the North Dakota Department of Transportation (NDDOT), and the Corps for meeting with us to discuss our comments on the Draft Environmental Impact Statement (DEIS), and for followup discussions between our staff and your agencies. Clarification of our mutual concerns and the project site visit were very helpful. We had the following major concerns regarding the DEIS: (1) significant impacts to wetlands and other aquatic and terrestrial resources, the process to evaluate impacts and identify the least damaging practicable alternative under the 404(b)(1) Guidelines; (2) an insufficient range of alternatives; and (3) the relationship between Purpose and Need and the development of alternatives. Our remaining concerns with the FEIS are discussed below.

CWA 404(b)(1) Evaluation and Purpose and Need Statement

1. The CWA Section 404(b)(1) process has not been completed. NEPA regulations [40 CFR 1500.2(c)], CWA Regulations [40 CFR 230.10(a)(4)], an FHWA Memorandum (Applying the Section 404 Permit Process to Federal-Aid Highway Projects (February 3, 1989), Regional

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1. Agreements on NEPA and Section 404 Merger (November 6, 1995), and FHWA Environmental Streamlining efforts encourage integrating NEPA and the CWA permitting process. We noted in our DEIS comments that the EIS did not incorporate the Section 404 requirements in the alternatives analysis nor in proposed mitigation of wetland and other aquatic resource impacts.

2. We note substantial revisions to the Purpose and Need statement. A primary concern remains the narrow Purpose statement that precludes detailed consideration of alternatives in NEPA and the 404(b)(1) process. The applicant's (NDDOT) project Purpose statement in the Public Notice is stated broadly, "... to improve safety, enhance system performance, and improve system continuity." However, a narrow interpretation of Purpose in the FEIS resulted in FHWA eliminating from detailed consideration any alternative that could reduce environmental damage, particularly to aquatic resources, along the proposed right-of-way. Narrowly defining the broad project Purpose statement – concluding that only a four-lane, divided highway can meet the basic/overall project Purpose of "consistency" – appears to defeat the 404(b)(1) Guidelines requirement to use the basic project Purpose to select alternatives. A four-lane, divided highway should be one alternative, not the Purpose. That approach foreclosed detailed impact analysis of alternatives such as the "Super 2" alternative. Without such analysis, detailed examination of alternatives that have less environmental impact cannot be conducted.

3. We enclose additional discussion regarding our concerns about Purpose. Because the Corps' Public Notice does not state what the basic project Purpose is for CWA analysis, we strongly urge the Corps to implement your independent judgement concerning the applicant's basic/overall project Purpose.

Wetlands Impacts and Mitigation

4. Depending on the alternative chosen, the direct wetlands fill impacts range from 75 to 88 acres, with the Preferred Alternative having direct fill impacts of 79.84 acres (FEIS, page 4-19). Wetlands within the proposed right of way total another 152 acres under the Preferred Alternative (Table 4-3, page 4-21). The functions, quality, and values of those wetlands are not evaluated, but we understand that information is being developed in coordination with FWS and the Corps and will be needed to complete the 404(b)(1) Evaluation and to determine specific mitigation for unavoidable wetland losses.

5. Our other concerns about water resource impacts and mitigation of unavoidable impacts are in our comments on the DEIS for this project. Those concerns have not yet been resolved. Impacts to wetlands and aquatic resources could be reduced significantly by minimizing the widths of the median, shoulders, and clear areas where the road passes through important wetlands. We noted those sites after our site visit.

6. EPA recommends that the Corps' permit include mitigation conditions that can be implemented for all resources, not just waters of the U.S., should a permit be issued. We request the opportunity to review and comment on mitigation plans before they are adopted as final permit conditions. We believe that this is necessary because of the extremely limited details about mitigation in the available documents. EPA disagrees with the approach of designing final mitigation plans and conditions after the permit is issued. We believe that the mitigation and permitting requirements [40 CFR 230.10 (d), 40 CFR 230.12] are unmet if the permit is issued before the detailed mitigation plans are completed and verified as capable of being implemented. To overcome concerns about the possibility that impacts may decrease in the future as detailed design is conducted, the mitigation plan should address all impacts from a worse-case approach. If

it can be shown that future impacts that require mitigation are less than predicted, a process to allow the excess mitigation to be used as a mitigation bank should be included.

Alternatives

7. Several alternatives were screened out which have fewer environmental impacts, cost less and, we believe, appear to meet the primary Purpose and Need. In particular, the "Super 2" alternative (screened out) appears to provide the desired economic and social benefits, with significantly fewer adverse impacts. NEPA requires that all reasonable alternatives be rigorously explored and objectively evaluated [40 CFR 1502.14(a)] for reviewers to be able to compare the relative merits of all reasonable alternatives [40 CFR 1502.14(b)].

8. We did not note identification of an Environmentally Preferred Alternative, as encouraged by the Council on Environmental Quality during preparation of the Draft or Final EIS (Memorandum to Agencies Containing Answers to 40 Most Asked Questions on NEPA Regulations, Federal Register Vol. 46, No. 55, March 23, 1981). Identification of the Environmentally Preferred Alternative is required in the Record of Decision.

9. We still believe that a revised "Super 2" alternative could provide greater economic and social benefits to northwestern North Dakota and minimize or avoid adverse environmental impacts (we presented ideas for revision of that alternative in our DEIS comments). A revised Super 2 alternative could be developed, either: (a) an enhanced two-lane road or (b) a combination of a four-lane, divided highway in areas without significant environmental impacts and an enhanced two-lane road in areas that have significant natural and cultural resource impacts.

In summary, EPA continues to have most of the concerns about the project that we expressed in our DEIS comments. If you have any questions about our NEPA comments please contact me at (303) 312-6004. The staff contact is Brad Crowder, (303) 312-6396. Should you have questions concerning the comments and recommendations regarding wetland issues, please contact Dave Ruiter of my staff at (303) 312-6794.

Sincerely,

Richard Claggett
Chief, Wetlands and Watersheds Unit
Ecosystems Protection Program

Larry Svoboda
Director, NEPA Program
Ecosystems Protection and Remediation

cc: NDDOT – Mark Gaydos
USFWS – Jeff Towner
FHWA – Mark Schraeder

3

Environmental Protection Agency - Region 8
Detailed Comments on the Purpose and Need Statement
North Dakota Department of Transportation
Upgrade of US Highway 2
Public Notice Number 200360637
January 27, 2004

Purpose and Need (P&N) Statement

10. The P&N statement from the Draft Environmental Impact Statement (DEIS) was to meet "the area's transportation needs including social demand, regional economic viability and system continuity." Four alternatives [all four-lane, divided highways (with slightly alternate routes)] were examined in detail in the EIS. Other alternatives were eliminated from detailed consideration because they, in one manner or another, did not completely meet the P&N statement. In particular, alternatives were eliminated primarily because they did not meet the "system continuity" purpose. System continuity was defined as a high level, four-lane, divided highway. In other words, the project purpose was essentially treated as a four-lane, divided highway, since other alternatives could have met, at least in part, the other stated purposes.

In the Final Environmental Impact Statement (FEIS) and the Public Notice, the applicant's stated purpose is to "improve safety, enhance system performance, and improve system continuity." This revised P&N statement does not appear to be an improved articulation of the DEIS's P&N, but seems to be a fundamental change. Social demand and regional economic viability were removed from the P&N and replaced by, "improve safety and enhance system performance." The "system continuity" component of the P&N remains essentially the same, although it is now worded as, "improve system continuity."

From the Clean Water Act perspective, it appears that the basic project purpose is being interpreted too narrowly to assure that all practicable alternatives are being examined in order to identify the least environmentally damaging alternative. For example, the only alternative which can meet the applicant's definition of "system continuity" is a four-lane, divided highway. And, while the original purpose has been changed and the new purpose uses the words "improve" and "enhance," in reality, the FEIS eliminated all the proposed alternatives (except the same ones considered in detail in the DEIS) because the alternatives do not "improve" safety or "enhance" system performance enough.

The degree of safety and system performance necessary to make an alternative a reasonable alternative was not part of the DEIS, but only developed as new P&N statements in the FEIS. Given that these portions of the P&N are new, the reader does not have the opportunity through the NEPA review process to suggest alternatives that may be able to meet these P&N statements in a less environmentally damaging manner. We believe comparison of the P&N in the FEIS and the DEIS shows that the project purpose has changed between the two documents, and appears to be a constantly moving target.

Enclosure 1

United States Environmental Protection Agency (January 29, 2004)
Response:

1. FHWA and NDDOT agree with EPA's statement that integrating NEPA and the CWA permitting process is desirable. On projects such as this which covers a 100-mile corridor and thousands of wetlands in the area, it is neither practical nor prudent to finalize all details for the CWA permitting process for all alternatives and include them in the EIS. Four-hundred twenty-five wetlands within the area of potential effects were field delineated according to the 1987 ACOE Wetland Delineation Manual. These wetlands were typed in accordance with USFWS-Circular 39 and classified according to the Cowardin classification system (Wetland Assessment and Preliminary Impact, January 2000, Houston Engineering, Inc). Tables D-11, D-12, and D-17 summarize the wetland impacts by type (see responses #1, #5 & #9 pages 7-43 & 7-44 in FEIS). On September 11, 2000 EPA Region VIII was provided a copy of the Wetland Assessment and Preliminary Impact report. Completing the CWA permitting process will require determining actual unavoidable wetland impacts and finalized plans to mitigation those impacts. Impacts included in the FEIS are the worst case scenario. A final design is needed to refine impacts and to identify onsite mitigation.

   Because of the large scope of this project and because the plan to construct it over a period of several years, it is neither practical nor prudent to complete the design at this time. NEPA and the FHWA discourage this approach in order to maintain objectivity in the environmental evaluation process. Furthermore, roadway design standards and wetland mitigation regulations are subject to change over the next ten years. The FEIS on page 4-21 and in comments #3 and #4 on page 7-43, outlined the mitigation plan. Wetland impacts that will be mitigated, on or off-site will be developed in conjunction with NDGFD, USFWS, FHWA, and ACOE to insure that all CWA requirements will be met (see responses #4 & #5, page 7-43 in FEIS). The individual wetland sites that are being impacted vary little from one alternative to the next; the greatest variable is the amount of impact on each site. For the purpose of identifying the environmentally preferred alternative, the functions of the wetlands were considered equivalent. Final wetland impacts will include assessment of impacts to functions. Impacted functions will be addressed in the wetland mitigation plan.

2. Chapter 1, Purpose and Need (P&N), was revised in the FEIS in response to EPA's comments on the DEIS (see response #16, page 7-45 in FEIS) and reference to a four-lane facility was dropped. The revised P&N examined the reasons behind the public support or "social demand" presented in the DEIS. It was determined that the public support for improvements to this section of US 2 were to improve safety and enhance system performance. Safety has always been an important consideration in this project and the P&N was revised in the FEIS to more clearly reflect this. Safety, reliability, and system performance issues, such as efficiency, were discussed in the DEIS P&N. However, in response to comments on the DEIS from EPA and others that the P&N required further clarification; these factors were more fully discussed in the FEIS. The revised P&N represents a response to comments received on the DEIS, which is consistent with FHWA's obligation under NEPA to consider all comments received on the DEIS and, where appropriate, improve the analysis presented in the EIS (see 40 C.F.R. section 1503.4). Safety and system performance were important considerations in determining if an alternative met the purpose and need. Alternatives such as "Super 2" were not automatically dropped because they did not address four-laning. As stated in FEIS Section 2.3.4.2, pages 2-6 to 2-11, and response # 11, page 7-44, "Super 2" was dropped from detailed study because it does not adequately address safety concerns created by traffic moving at vastly different speeds, and it creates additional safety concerns associated with determining use of the passing lane under the adverse weather conditions typical of North Dakota in the winter. Additionally, the presence of the lengthy military convoys raises both safety and national security concerns when a passing vehicle is unable to pass the entire convoy before losing access to a passing lane. Furthermore, the introduction of the Super Two highway configuration may lead to both safety and continuity concerns as drivers encounter an unfamiliar section of roadway because a "Super Two" configuration does not exist anywhere else in the state. Finally, the Super Two Alternative does not

sufficiently enhance system performance to function properly as part of the Interregional System of roads under the NDDOT's Highway Performance Classification System due to safety concerns, passing restrictions, and limits on travel speeds due to slow-moving vehicles.

3. This comment is in regards to the US Army Corps of Engineers Notice of Pending Permit Evaluation under section 404 regulations and is not a comment on the FEIS. No comment.

4. With over 450 individual wetlands in the area of potential effect it is not practical to evaluate the functions of each wetland based on estimated impacts that will change. Actual impacts can not be determined until the designs including cross-sections are developed. During the final design for each segment, actual wetland impacts (including draining, loss of hydrology, loss of buffers, and functions) will be determined for each wetland and an on and off-site mitigation plan will be developed (see responses #3 & #5 page 7-43 in FEIS).

5. Of the 450 individual wetlands within the area of potential effects, eight locations containing sixteen individual wetlands were identified as having important habitat and vegetative conditions by the EPA during their site visit (see EPA memo page 7-29 in FEIS). Of these sixteen wetlands, the preferred alternative (selected alternative) avoided or was modified to avoid impacts to eight of these wetlands as well as minimizing impacts to five other wetlands by narrowing the median. It was determined that it was neither practical nor prudent to make the necessary modifications to avoid or reduce the impacts to the remaining three wetlands (see response to EPA memo pages 7-30 & 7-31 in FEIS).

6. This comment is in regards to the US Army Corps of Engineers Notice of Pending Permit Evaluation under section 404 regulations and is not a comment on the FEIS. No comment.

7. See response # 2.

8. The Selective North-South Alignment Alternative (Preferred) was identified as the environmentally preferred alternative because it provides the greatest overall avoidance and minimization of resource impacts as well as social impacts of all the build alternatives that met the Purpose and Need (see last paragraph in section 2.4.5, page 2-33 and responses #1 & #11 on pages 7-43 & 7-44 in FEIS).

9. Based on comments received, additional review of the "Super Two" Alternative was performed. Due to the concerns previously discussed the alternative was dropped. "Super 2" was initially dropped from detailed study because it does not adequately address safety concerns created by traffic moving at vastly different speeds, and it creates additional safety concerns associated with determining use of the passing lane under the adverse weather conditions typical of North Dakota in the winter. Additionally, the presence of the lengthy military convoys raises both safety and national security concerns when a passing vehicle is unable to pass the entire convoy before losing access to a passing lane. Furthermore, the introduction of the Super Two highway configuration may lead to both safety and continuity concerns as drivers encounter an unfamiliar section of roadway because a "Super Two" configuration does not exist anywhere else in the state. Finally, the Super Two Alternative does not sufficiently enhance system performance to function properly as part of the Interregional System of roads under the NDDOT's Highway Performance Classification System due to safety concerns, passing restrictions, and limits on travel speeds due to slow-moving vehicles. Revising the "Super 2" alternative with enhanced two-lane road or in combination with a four-lane road will not improve safety and in fact would result in an increase safety concerns (see pages 2-6 to 2-11, and response # 11, page 7-44 in FEIS).

10. Enclosure 1 is in regards to the US Army Corps of Engineers Notice of Pending Permit Evaluation under section 404 regulations and is not a comment on the FEIS. No comment.

NORTH DAKOTA DEPARTMENT OF HEALTH
Environmental Health Section

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1200 Missouri Avenue
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January 2, 2004

Mark S. Gaydos, P.E., Design Engineer
ND Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

RECEIVED NDDOT
JAN 6 2004
DESIGN DIVISION
BISMARCK, ND

Re: U.S. Highway 2 Final Environmental Impact Statement
Project NH-7-002(051)032
Williams, Mountrail & Ward Counties

Dear Mr. Gaydos:

1.

This department has reviewed the information concerning the above-referenced project submitted under date of November 18, 2003 with respect to possible environmental impacts.

This department believes that environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. With respect to construction, our comments remain the same as those in our January 10, 2000 letter to Houston Engineering (copy attached).

If you have any questions regarding our comments, please feel free to contact this office.

Sincerely,

L. David Glatt, Chief
Environmental Health Section

LDG:cc
Attach.

JAN 2004
RECEIVED
Office of
Project Development
NDDOT
Bismarck, ND

Environmental Health Section Chief's Office 701-328-5150 | Air Quality 701-328-5188 | Municipal Facilities 701-328-5211 | Waste Management 701-328-5166 | Water Quality 701-328-5210

Website: www.health.state.nd.us/ndhd/environ
Printed on recycled paper.

North Dakota Department of Health, Environmental Health Section (January 2, 2004) Response:

1. Comment noted.

VII. Conclusion

Based upon careful consideration of the entire social, economic, and environmental evaluations contained in the Draft EIS, Final EIS, Section 4(f) evaluation, the FHWA concludes that the Selected Alternative is the environmentally preferred alternative. The proposed action also, includes all possible planning to minimize harm to identified Section 4(f) properties resulting from such use. This ROD will permit NDDOT to proceed with the design of the project.

VIII. Record of Decision Approval

There has not been any new evidence presented since the Public Hearing and Final EIS were completed.

_____ _____

Date Federal Highway Administration